

**UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF OKLAHOMA**

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**MARLINE SIMINGTON,**

**Plaintiff**

**v.**

**ZWICKER & ASSOCIATES, P.A.,**

**Defendant**

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**Case No.: 5:11-cv-01391-M**

**AFFIDAVIT OF GARY T.  
SHORE IN SUPPORT OF  
ZWICKER & ASSOCIATES,  
P.C.'S MOTION FOR  
SUMMARY JUDGMENT**

I, Gary T. Shore, on oath depose and state as follows. I have personal knowledge of the matters set forth herein:

1. I am Vice President of Information Technology and Chief Security Officer of Zwicker & Associates, P.C. ("Zwicker") a Massachusetts law firm and professional corporation whose main office is located at 80 Minuteman Road, Andover, MA 01810 and which has branch offices in various states. In that capacity, subject to directives issued by the firm's attorneys, I oversee all of the firm's information technology and related processes. I have been employed by Zwicker since 1993 and I have had these responsibilities over the entire time that I have been employed by Zwicker.

2. Zwicker maintains an electronic database of account records for all accounts which are forwarded by Zwicker's clients to the firm. This database is called the "Recovery Management System" or "RMS." Part of my responsibility is to ensure that information regarding the activities undertaken by Zwicker on an account can be entered onto the RMS record.

3. My responsibilities also include overseeing the operation of the autodialer which Zwicker uses to make some of the telephone calls which Zwicker makes to consumers regarding their accounts. Zwicker's autodialer can be operated in predictive mode or non-predictive mode. In other words, Zwicker does not have one autodialer and a separate predictive dialer. I also oversee the process whereby all telephone calls which Zwicker makes on an account using the autodialer are noted on the electronic account record for the account which Zwicker maintains.

4. The entry on the electronic account record for each autodialer call made on the account lists the date and time of the call and the result of the call. All calls made using the autodialer are entered on the electronic account record. In other words, both completed calls, i.e., calls which were answered by a live person, an answering machine or a voicemail, or incomplete calls, i.e., those in which there was no answer, are entered on the electronic account record. For each call made using the autodialer, the entry made on RMS includes the last four digits of the telephone number called.

5. Attached hereto as Exhibit 1 is the report of all dialer calls made by Zwicker on Ms. Simington's account going forward from the date on which Zwicker first received the account, September 1, 2009, until the present. This report is part of the electronic account record for Ms. Simington's account which Zwicker maintains as a business record as described in the affidavit of Michael Koziol.

6. As shown in Exhibit 1, during the period from September 3, 2009 through January 14, 2010, Zwicker made a number of calls on Ms. Simington's account using the autodialer. As shown on Exhibit 1, most of the calls made using the autodialer were to

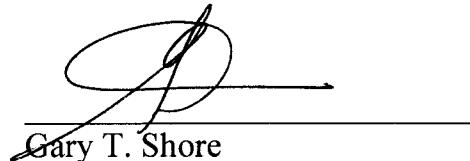
the telephone number ending in "8317," and the remaining calls made using the autodialer were to the telephone number ending in "7119." As Exhibit 1 shows, Zwicker did not make any call using the autodialer to telephone number 580-695-1983, the telephone number which, I have been informed, Ms. Simington claims is for her cell phone.

7. Zwicker has implemented procedures to assure that Zwicker personnel cannot call cell phone numbers by using the autodialer. Rather, because of the procedures which Zwicker has implemented, Zwicker personnel must dial cell phone numbers manually.

8. Zwicker does not furnish information to consumer reporting agencies.

9. Zwicker does not make pre-recorded calls.

Signed under the penalties of perjury this 1<sup>st</sup> day of October, 2012.



Gary T. Shore

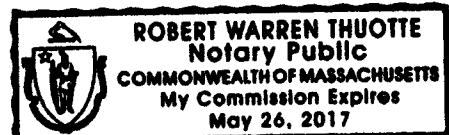
COMMONWEALTH OF MASSACHUSETTS

Essex, ss

On this 1st day of October 2012, before me, the undersigned notary public, Gary Shore personally appeared and proved to me through satisfactory evidence of identification, which was personal knowledge, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that she signed it voluntarily for its stated purpose.



Notary Public  
My Commission Expires



# **EXHIBIT 1**

Acct...: [REDACTED] 1940 Birthdate....: [REDACTED]  
SOCIAL S [REDACTED] 6 DO NOT CONTACT [REDACTED]....: [REDACTED]  
Name...: SIMINGTON, MARLINE Recoverer....: ATTY  
Name 2.: [REDACTED] Agncy/Atty...: HSOK  
Address: [REDACTED] Bal [REDACTED] Interest %...: [REDACTED]  
Address: [REDACTED] \*NO Z&A CALLS Received....: 9/01/09  
City...: [REDACTED] [REDACTED] Assigned....: 1/27/10  
Ph(Off): 4999999999 Ph(Ho): 4999999999 User-Id

Date	Time	Code	Description(Old Data)	User-Id
1/14/10	20:12	92291	Answering Machin - 8317 - DIALER	DIALER
12/29/09	21:52	92291	Answering Machin - 8317 - DIALER	DIALER
12/28/09	21:33	92291	Answering Machin - 8317 - DIALER	DIALER
12/24/09	14:45	92291	Answering Machin - 8317 - DIALER	DIALER
12/22/09	21:55	92291	Answering Machin - 8317 - DIALER	DIALER
12/21/09	20:52	92291	Answering Machin - 8317 - DIALER	DIALER
12/15/09	21:41	92291	Answering Machin - 8317 - DIALER	DIALER
12/09/09	21:10	92291	Answering Machin - 8317 - DIALER	DIALER
12/04/09	14:42	92291	Other Result - 8317 - tmarks	DIALER
11/30/09	21:30	92291	Answering Machin - 8317 - DIALER	DIALER
11/28/09	11:17	92291	Answering Machin - 8317 - DIALER	DIALE +

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Acct...: [REDACTED] 1940 Birthdate....:  
SOCIAL S [REDACTED] 6 DO NOT CONTACT [REDACTED]  
Name...: SIMINGTON, MARLINE [REDACTED]  
Name 2:: [REDACTED] Recoverer....: ATTY  
Address: [REDACTED] Agncy/Atty....: HSOK  
Address: [REDACTED] \*NO Z&A CALLS Interest %....:  
City...: [REDACTED] [REDACTED] Received.....: 9/01/09  
Ph(Off): 4999999999 Ph(Ho)..: 4999999999 Assigned.....: 1/27/10  
Date Time Code Description(Old Data) User-Id

11/23/09	21:31	92290	Answering Machin - 8317 - DIALER	DIALER
11/19/09	11:45	92290	Answering Machin - 8317 - DIALER	DIALER
11/18/09	21:37	92290	Answering Machin - 8317 - DIALER	DIALER
11/16/09	21:15	92290	Answering Machin - 8317 - DIALER	DIALER
11/12/09	11:24	92290	Answering Machin - 8317 - DIALER	DIALER
11/10/09	10:38	92290	No Voice Detect - 8317 - DIALER	DIALER
11/05/09	11:19	92290	Talk To Debtor - 8317 - sweaver	DIALER
10/29/09	11:27	92290	Talk To Debtor - 8317 - jmitchell	DIALER
10/24/09	10:24	92290	Answering Machin - 8317 - DIALER	DIALER
10/22/09	10:46	92290	Answering Machin - 8317 - DIALER	DIALER
10/15/09	10:48	92290	Answering Machin - 8317 - DIALER	DIALE +

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Acct....: [REDACTED] 1940 Birthdate....: [REDACTED]  
SOCIAL S [REDACTED] 6 DO NOT CONTACT [REDACTED].....: [REDACTED]  
Name....: SIMINGTON, MARLINE Recoverer....: ATTY  
Name 2:: [REDACTED].....: [REDACTED]  
Address: [REDACTED] Bal [REDACTED] Agncy/Atty....: HSOK  
Address: \*NO Z&A CALLS Interest %....: [REDACTED]  
City....: [REDACTED] Received....: 9/01/09  
Ph(Off): 4999999999 Ph(Ho): 4999999999 Assigned....: 1/27/10  
Date Time Code Description(Old Data) User-Id  
10/13/09 15:19 92290 Left Message - 7119 - tmcfall DIALER  
10/01/09 15:46 92289 Other Result - 7119 - cshifflett DIALER  
9/15/09 09:32 92289 Answering Machi - 8317 - ahenry DIALER  
9/08/09 14:27 92289 Other Result - 7119 - tadkins DIALER  
9/03/09 15:44 92289 Left Message - 7119 - rcollins DIALER  
\*\*\* END OF HISTORY \*\*\*

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